

**KELLEY DRYE & WARREN LLP**

A LIMITED LIABILITY PARTNERSHIP

**WASHINGTON HARBOUR, SUITE 400**

**3050 K STREET, NW**

**WASHINGTON, D.C. 20007-5108**

(202) 342-8400

FACSIMILE

(202) 342-8451

www.kelleydrye.com

NEW YORK, NY

TYSONS CORNER, VA

CHICAGO, IL

STAMFORD, CT

PARSIPPANY, NJ

BRUSSELS, BELGIUM

AFFILIATE OFFICES

JAKARTA, INDONESIA

MUMBAI, INDIA

DIRECT LINE: (202) 342-8518

EMAIL: tcohen@kelleydrye.com

September 26, 2008

**VIA ECFS**

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
The Portals  
445 - 12th Street, SW  
Washington, DC 20554

Re: Notice of Ex Parte Presentation – WC Docket 07-135

Dear Ms. Dortch:

OmniTel Communications, a rural competitive local exchange carrier (“CLEC”) under the Commission’s access charge rules, has participated in the above-referenced docket by filing comments and by meeting with Commission staff, including through its representatives on several occasions. OmniTel contends -- and believes there is considerable support for the proposition -- that there is only one fundamental issue to be addressed in this proceeding: whether the rates a LEC charges interexchange carriers (“IXCs”) for switched access services when that LEC originates and or terminates large volumes of traffic are just and reasonable under Section 201(b) of the Communications Act of 1934, as amended.<sup>1</sup> Other issues that have been raised by parties in this rulemaking proceeding are largely superfluous and distract from this central issue.<sup>2</sup>

---

<sup>1</sup> 47 U.S.C. § 201(b)

<sup>2</sup> Among the subordinate issues that are “red herrings” in this rulemaking proceeding are the types of businesses in which LECs’ customers engage and whether LECs and their customers have any sort of commission, marketing fee, or revenue sharing arrangement. Having characterized these issues in this manner, OmniTel submits further that there may be, in certain cases, additional issues requiring a factual inquiry, which cannot properly be addressed in this generic proceeding but should be handled in specific complaint settings. These issues may concern, for example, whether any particular CLEC is a rural

Marlene H. Dortch  
September 26, 2008  
Page Two

In the 2001 *CLEC Access Charge Order*,<sup>3</sup> the Commission ruled that rural CLECs may assess switched access rates up to the rates of the competing rural incumbent local exchange carrier or, if the competing incumbent is not a rural carrier, the CLEC may set its rates up to the NECA's highest rate band for local switching (the so-called "rural exemption").<sup>4</sup> In establishing these rules, the FCC determined, in effect, that rates at or below the applicable benchmarks were *per se* just and reasonable. By the same token, rural CLECs that wish to charge rates above the benchmarks have been able to do so under the Commission's rules, but only outside the tariffing process, *i.e.*, through carrier-to-carrier contracts.<sup>5</sup>

In its 2004 reconsideration of the *CLEC Access Charge Order*,<sup>6</sup> the FCC specifically rejected a request to allow CLECs to tariff higher rates or obtain arbitration of higher proposed rates when unable to negotiate them on the basis of cost justification. The FCC emphasized that, from henceforth, it was regulating CLEC rates based on market factors, not cost factors.<sup>7</sup>

In the pending "traffic stimulation" rulemaking proceeding (WC Docket 07-135), certain IXC's allege that allowing CLECs to set rates on the foregoing benchmarks provides an incentive for rural CLECs to engage in so-called "traffic stimulation" activities, which the IXC's believe render CLEC access charge rates objectionable, even though they comply with the rural CLEC access charge rules. In short, the IXC's seek a ruling from the Commission that the current rules are no longer consistent with the public interest and are not being employed as originally intended when rural CLECs sign up end users with large amounts of interexchange traffic. As relief in this proceeding, the IXC's seek a change in the rules that reduce the

---

CLEC and therefore qualifies to participate in the FCC's CLEC access charge rules, what specific CLEC access charge tariff terms and conditions might apply to the network configuration in which access charges are being assessed, and whether there is an affiliation between a CLEC and a particular customer.

<sup>3</sup> *In the Matter of Access Charge Reform, Reform of Access Charges Imposed by Competitive Local Exchange Carriers, Seventh Report and Order and Further Notice of Proposed Rulemaking*, CC Docket No. 96-262, rel. April 27, 2001. ("CLEC Access Charge Order")

<sup>4</sup> 47 C.F.R. § 61.26 ("CLEC Access Charge Rules")

<sup>5</sup> *CLEC Access Charge Order* at ¶ 40.

<sup>6</sup> *In the Matter of Access Charge Reform, Reform of Access Charges Imposed by Competitive Local Exchange Carriers, Petition of Z-Tel Communications, Inc. For Temporary Waiver of Commission Rule 61.26(d) to Facilitate Deployment of Competitive Service in Certain Metropolitan Statistical Areas*, CC Docket No. 96-262 and CCB/CPD File No. 01-19, rel. May 18, 2004.

<sup>7</sup> *Id.* ¶ 57.

Marlene H. Dortch  
September 26, 2008  
Page Three

permissible levels of switched access charges when rural CLECs terminate large numbers of interstate interexchange minutes. Numerous IXC's have submitted comments and *ex parte* letters and presentations in this proceeding proposing new benchmarks to deal with the alleged traffic stimulation, but none of these are supported by sufficient evidence to allow the Commission to adopt the proposed rates (and the conditions in which they apply) as the basis for a new rule. Instead, these proposals assume that a CLEC subject to the current rules with large amounts of incoming interexchange traffic is acting unlawfully and then impose arbitrary limits and propose that such CLECs may assess access charges only at NECA Band 1 rates, at the high end, or a few tenths of a cent per minute, on the low end. Notably, having no evidence to support these proposed levels, these suggested rule changes essentially abandon the market-based principles the Commission's rural CLEC access charge rules were designed, as explained above, to reflect.

As OmniTel's representatives have indicated to the staff in prior meetings in this docket, OmniTel has been negotiating with individual IXC's on the prospective access rate that it will charge and that the IXC will pay for so-called "stimulated traffic." With certain IXC's, OmniTel has found these negotiations to be productive, and settlements (which are confidential) have resulted from the parties' joint efforts. With other IXC's, negotiations continue. OmniTel believes the Commission should view the existence of such agreements as persuasive evidence that, even with their divergent interests, rural CLECs and IXC's operating in an environment with the current Commission rules can settle their disputes and arrive at market-based arrangements for the provision of future access services for so-called "stimulated traffic" without the imposition of additional regulation. In other words, no Commission action in this proceeding is warranted.

However, should the Commission determine that it needs to alter the current access charge rules for rural CLECs, it should impose rates in cases where there is so-called "stimulated traffic" based upon the best evidence available, that is the rates actually agreed upon by the IXC's and CLECs in prospective rate agreements. To that end, to settle their recently-filed disputes regarding both interstate and intrastate access charges reflected in both federal court in the Eastern District of Virginia and before the State of Iowa Department of Commerce Utilities Board ("IUB"), OmniTel and Verizon recently entered into an agreement covering prospective rates through July 2011. The heart of the deal is that "(i) OmniTel agreed, as part of a comprehensive set of negotiated trade-offs, to charge Verizon a single composite rate for originating and terminating intrastate and interstate switched access traffic for the next three years; and (ii) Verizon agreed, based on the same set of negotiated factors, to make a lump-sum payment to OmniTel to settle the 'past-due' amount."<sup>8</sup> In response to a filing from Verizon to

---

<sup>8</sup> *Verizon's Supplemental Filing Regarding Dismissal of Respondent OmniTel*, State of Iowa Department of Commerce Iowa Utilities Board, Docket No. FCU-08-11, Aug. 21, 2008 at 4. ("Supplemental Filing") A copy of the *Supplemental Filing* is attached hereto.

Marlene H. Dortch  
September 26, 2008  
Page Four

dismiss the litigation it commenced against OmniTel, the IUB directed OmniTel to make that rate and the terms and conditions of its agreement with Verizon, as they apply to intrastate services, available to all other customers of OmniTel's intrastate switched access telecommunications services. On September 24, 2008, OmniTel filed with the IUB the attached amendment to its intrastate tariff, which reflects its agreement with Verizon. As a result, the rate and terms and conditions of that agreement will be available to all other interexchange carriers. The going-forward "single composite rate" for the provision of access services to its IXC customers in this tariff amendment is \$0.014/minute of use – regardless of the amount of traffic exchanged between the LEC and IXC. This rate is comparable to typical access charges (inclusive of local switching, transport, and other applicable charges) that apply currently for carriers entitled to bill at NECA Band 1 rates.<sup>9</sup>

This rate is based on expectations from both Verizon and itself that OmniTel will continue to provide service to entities, like conference call companies and chat line companies, whose own customers generate large amounts of interexchange traffic terminated by OmniTel. This rate is appropriate for the FCC to use as a *per se* lawful default rate for rural CLECs providing access services to IXCs exchanging large volumes of interstate interexchange traffic in the event the CLEC and IXC cannot negotiate a rate.

For rural CLECs who do not terminate so-called "stimulated traffic" or otherwise do not experience relatively large traffic volumes, there is no reason to believe – and no evidence has been placed in the record to demonstrate -- that the current benchmark and exemption of the *CLEC Access Charge Rules* should be altered. Therefore, the Commission should establish a threshold based on monthly minutes of terminating traffic before this new rate becomes effective. Based on *ex parte* submissions from other interested parties in this proceeding, including IXCs, and its own knowledge of traffic levels for rural CLECs, OmniTel submits that this threshold should be set at 2,000 minutes of use per month for each access line. If a CLEC exceeds this threshold, then the default composite rate of \$0.014/minute of use should apply, unless the parties negotiate another rate.

We request that this letter, which is being filed electronically, be placed in the file for the above-captioned proceeding.

---

<sup>9</sup> Verizon states in its *Supplemental Filing* that "its basis for settling based on a modification of OmniTel's going-forward rate is that Verizon seeks to stop OmniTel's traffic pumping and other illegal conduct by reducing OmniTel's incentives to engage in arbitrage." *Id.*

KELLEY DRYE & WARREN LLP

Marlene H. Dortch  
September 26, 2008  
Page Five

Please contact the undersigned if there are any questions.

Sincerely,



Thomas Cohen  
Edward A. Yorkgitis, Jr.  
Kelley Drye & Warren LLP  
3050 K Street, NW  
Suite 400  
Washington, DC 20007  
Tel. (202) 342-8518  
Fax. (202) 342-8451

*Counsel for OmniTel Communications*

Enclosure: OmniTel Contract Tariff Filing of September 23, 2008 with the State of Iowa  
Department of Commerce Utilities Board  
Verizon's Supplemental Filing Regarding Dismissal of Respondent OmniTel of  
August 21, 2008 with the State of Iowa Department of Commerce Utilities Board

cc: A. Bender  
S. Deutchman  
S. Bergmann  
G. Orlando  
N. Alexander  
D. Stockdale  
J. McKee  
A. Lewis  
J. Hunter  
P. Arluk  
L. Engledow  
V. Goldberg

TRANSMITTAL

FILED WITH  
Executive Secretary

SEP 24 2008

IOWA UTILITIES BOARD

Date: September 24, 2008

Company Name: BTC Inc. d/b/a Western Iowa Networks, OmniTel  
Communications, Inc. and Premier  
Communications, Inc.

Subject Matter: Notice of Tariff Amendment Pursuant to Board  
Order Dated August 29, 2008

Person to Contact: Robert F. Holz, Jr.  
DAVIS, BROWN, KOEHN, SHORS &  
ROBERTS, P.C.  
The Davis Brown Tower  
215 10th Street, Suite 1300  
Des Moines, IA 50309  
Telephone: (515) 288-2500  
Facsimile: (515) 243-0654  
Email: [bobholz@davisbrownlaw.com](mailto:bobholz@davisbrownlaw.com)

Initial Filing: No

Docket Number: FCU-08-11

**STATE OF IOWA  
DEPARTMENT OF COMMERCE  
UTILITIES BOARD**

FILED WITH  
Executive Secretary

SEP 24 2008

**IOWA UTILITIES BOARD**

---

MCImetro Transmission Access	)	
Transmission Services LLC d/b/a Verizon	)	
Access Transmission Services and MCI	)	
Communications Services, Inc. d/b/a	)	
Verizon Business Services,	)	
	)	
Complainants	)	DOCKET NO. FCU-08-11
	)	
v.	)	
	)	
BTC Inc. d/b/a Western Iowa Networks,	)	
OmniTel Communications, Inc.	)	
and Premier Communications, Inc.	)	
	)	
	)	
Respondents	)	

---

**NOTICE OF TARIFF AMENDMENT  
PURSUANT TO BOARD ORDER DATED AUGUST 29, 2008**

Consistent with the Board's Order dated August 29, 2008 entitled: "Order Granting Request for Dismissal of Omnitel, Subject to Conditions, and Granting Joint Request for Extension of Time" (the "Order"), in Docket FCU-08-11 (the "Proceeding"), and as more fully described below, OmniTel Communications, Inc. ("OmniTel") has filed an amendment to its intrastate access services tariff.

In the Order, the Board conditionally granted the request by Verizon to dismiss OmniTel from the Proceeding pursuant to a settlement agreement between Verizon and

OmniTel. The Board's condition for OmniTel's final dismissal was that OmniTel specify and file the Verizon negotiated access rate as a part of OmniTel's access tariff, make that rate available to all qualifying interexchange carriers and obtain approval of the rate by operation of law or by the Board.

OmniTel concurs with the Effective Access Tariffs as filed by the Iowa Telecommunications Association in the State of Iowa (the "Tariff"), with certain exceptions. OmniTel continues to concur in the Tariff but, consistent with the Board's Order, amends its concurrence by adding a new exception 3, entitled "Contract Offer." A copy of its proposed amended tariff is attached.

Under the new exception 3 Contract Offer, OmniTel will charge qualifying Interexchange carriers (IXCs) a "Single Composite Rate" of \$.014 per minute of use for "OmniTel Contracted Services" as that term is defined in the new exception, provided that the IXCs meet certain terms and conditions. IXCs may meet those terms and conditions and qualify for the Single Composite Rate by entering into a contract with OmniTel, substantially in the same form as the contract attached as Exhibit A to the Contract Offer.

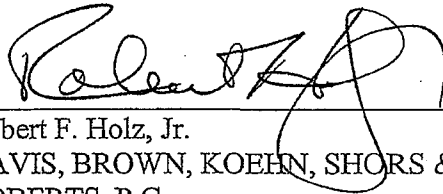
The Single Composite Rate is the same \$.014 per minute of use access rate negotiated between Verizon and OmniTel in the OmniTel-Verizon settlement agreement and applies to the same scope of services. As Verizon noted in its supplemental filing to the Board dated August 21, 2008, the access rate agreed upon by OmniTel and Verizon was part of a comprehensive set of negotiated trade-offs reflected in the terms and conditions of the OmniTel-Verizon settlement agreement. The terms



and conditions of exception 3 to the proposed tariff are consistent with those of the settlement agreement.

Accordingly, OmniTel respectfully requests that, upon the amendment to the Tariff, exception 3 entitled "Contract Offer", taking effect, the Board simultaneously grant Verizon's previously requested dismissal of OmniTel from this proceeding with prejudice. Omnitel is authorized to state that Verizon respectfully joins in the foregoing request.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Robert F. Holz, Jr.", is written over a horizontal line.

Robert F. Holz, Jr.  
DAVIS, BROWN, KOEHN, SHORS &  
ROBERTS, P.C.  
The Davis Brown Tower  
215 10th Street, Suite 1300  
Des Moines, IA 50309  
Telephone: 515-288-2500  
Firm Fax: 515-243-0654  
Email: [bobholz@davisbrownlaw.com](mailto:bobholz@davisbrownlaw.com)

ATTORNEYS FOR  
OMNITEL COMMUNICATIONS, INC.

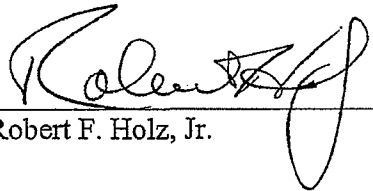
**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served the foregoing document on the following persons and parties as required by the rules of the Iowa Utilities Board:

John R. Perkins  
Office of Consumer Advocate  
310 Maple Street  
Des Moines, IA 50319-0063

Bret A. Dublinske  
Dickinson, Mackaman, Tyler & Hagen, P.C.  
699 Walnut Street, Suite 1600  
Des Moines, IA 50309

Dated this 24th day September, 2008.

  
\_\_\_\_\_  
Robert F. Holz, Jr.

OmniTel Communications, Inc.

TELEPHONE TARIFF

PART VII

Filed with Board

First Revised  
Cancels Original

Sheet No. 78  
Sheet No. 78

ACCESS SERVICES CONCURRENCE

A. CONCURRENCE IN RATES AND CHARGES OF NATIONAL EXCHANGE CARRIER ASSOCIATION TARIFF F.C.C. NO. 3, 4, AND 5 AS FILED BY THE IOWA TELECOMMUNICATIONS ASSOCIATION ACCESS SERVICE TARIFF NO. 1

1. OmniTel Communications, Inc. concurs in the Effective Access Tariffs as filed by the Iowa Telecommunications Association in the State of Iowa.

B. EXCEPTIONS TO IOWA TELECOMMUNICATIONS ASSOCIATION ACCESS SERVICE TARIFF NO. 1.

1. OmniTel Communications, Inc. does not concur with Iowa Telephone Association Access Service Tariff No. 1, Section 1.2.2 (E)(1). The OmniTel Communications, Inc. Common Line rate per access minute of use shall be \$0.00. This change is effective May 19, 2004 in compliance with Iowa Utilities Board order in Docket No. RMU-03-11, Intrastate Access Service Charges [199 IAC 22.14(2)"d"(1)], issued March 18, 2004.

2. Service under this tariff is subject to a Carrier Common Line charge of \$0.03 per minute of use from and after May 19, 2004 to be subsequently billed if the Orders of the Iowa Utilities Board requiring removal of the \$0.03 per minute of use Carrier Common Line charge are subsequently overturned.

3. Contract Offer -

Notwithstanding anything in this Tariff that may be to the contrary, an interexchange carrier may obtain a "Single Composite Rate" of \$0.014 per minute of use for the access services contracted by entry into a Contract with OmniTel substantially in the same form as Exhibit A hereto (hereafter the "Contract"), pursuant to the following terms and conditions:

(N)  
↓

ISSUED: September 24, 2008 EFFECTIVE: October 24, 2008  
Date Date

BY: Ronald J. Laudner, Jr. Manager Nora Springs, Iowa 50458  
Name Title Address

## ACCESS SERVICES CONCURRENCE

## 3. Contract Offer – (Continued)

(N)

## (A) Scope

Commencing pursuant to the terms of the Contract and as provided herein and ending with the service period(s) included on OmniTel invoices dated July 1, 2011, to any eligible interexchange carrier that elects to enter into a Contract in accordance with the requirements set forth below, OmniTel will charge for "OmniTel Contracted Services" a Single Composite Rate of \$0.014 per minute of use ("\$0.014/mou") (hereafter the "Single Composite Rate"). "OmniTel Contracted Services" means intrastate interexchange traffic (a) delivered by [Name of Interexchange Carrier ("the IXC")] to OmniTel for delivery to customers of OmniTel or (b) originated by customers of OmniTel and delivered by OmniTel to the IXC commencing with the effectiveness of the Single Composite Rate in accordance with the terms of the Contract. OmniTel and the IXC agree that the Single Composite Rate of \$0.014 per minute of use for originating and terminating intrastate traffic includes without limitation local switching, carrier common line, transport facility (mileage) for tandem-host or host-remote, transport termination for tandem-host or host-remote, common trunk port for tandem-host or host-remote, information surcharge, residual interconnection charge, SS7 Signaling, and 800 database queries.

## (B) Eligibility

Each IXC who executes the Contract will be eligible to obtain the Single Composite Rate from OmniTel, in accordance with the terms of the Contract.

## (C) Terms and Conditions

1. Within ten (10) days of executing the Contract, and as a condition precedent to the Single Composite Rate becoming effective, the IXC shall have made all necessary payments to OmniTel to bring current all outstanding invoices for "OmniTel Services" provided by OmniTel to the IXC through and including the service period covered by invoices dated sixty (60) days or more prior to the execution of the Contract (such invoices, referred to as "Outstanding Invoices"). "OmniTel Services" means the services that the IXC has used and that OmniTel invoiced as intrastate switched access services on the Outstanding Invoices. As provided in the Contract, the IXC shall agree that, upon paying the Outstanding Invoices as above, the IXC shall not bring any action, suit, or legal challenge against OmniTel regarding OmniTel's Services (or charges related to such OmniTel Services) and shall release OmniTel from any claims, liability, and causes of action related to such OmniTel Services and charges.

ISSUED: September 24, 2008  
Date

EFFECTIVE: October 24, 2008  
Date

BY: Ronald J. Laudner, Jr. Manager Nora Springs, Iowa 50458  
Name Title Address

## ACCESS SERVICES CONCURRENCE

## (C) Terms and Conditions (Continued)

(N)

2. Within five (5) days of executing the Contract, and as a further condition precedent to the Single Composite Rate becoming effective, the IXC shall have filed a pleading to dismiss with prejudice each and every pending proceeding, if any, before any agency or court against OmniTel relating to any dispute with OmniTel over OmniTel Services.
3. Upon payment by the IXC of the Outstanding Invoices for OmniTel Services per paragraph 1 above, and, if applicable and as a further condition precedent to the Single Composite Rate becoming effective, once every agency or court dismisses every pending proceeding (or other action), if any, with prejudice per paragraph 2 above, a \$0.014/mou rate for all OmniTel Contracted Services shall take effect and shall apply prospectively to each future invoice for service periods after those included in the Outstanding Invoices through and including the service period covered by OmniTel's July 1, 2011 invoices, as follows:
  - (i) The prospective rate for OmniTel Contracted Services through the service period covered by OmniTel's July 1, 2011 invoices will be a Single Composite Rate of \$0.014/mou (and no other charge).
  - (ii) Once the \$0.014/mou rate becomes effective, invoices for services invoiced by OmniTel as switched access services dated prior to the date that the Single Composite Rate becomes effective for service periods postdating the service periods included in the Outstanding Invoices will be restated at \$0.014/mou and will be due within thirty (30) days of the restated invoice date, inclusive. Such services as are subject to this subparagraph (ii) shall otherwise be considered OmniTel Contracted Services for purposes of the Contract.
4. As provided in the Contract, OmniTel shall, for the duration of the service periods covered up to and including the service period(s) included on OmniTel invoices dated July 1, 2011, continue to designate as its point of interconnection with Iowa Network Services ("INS") its existing point of interconnection, so that the IXC may continue to deliver all interexchange traffic to OmniTel through INS at that point and receive all interexchange traffic from OmniTel through INS at that point.

ISSUED: September 24, 2008 EFFECTIVE: October 24, 2008  
Date DateBY: Ronald J. Laudner, Jr. Manager Nora Springs, Iowa 50458  
Name Title Address

## ACCESS SERVICES CONCURRENCE

## (C) Terms and Conditions (Continued)

(N)

5. By executing the Contract and as provided therein, the IXC may not "challenge" OmniTel's invoices relating to or reflecting the \$0.014/mou rate for OmniTel Contracted Services except that the IXC could reserve its right to challenge in good faith charges submitted by OmniTel for (i) errors in volumes of traffic or (ii) errors in calculations, or (iii) types of arrangements for traffic not involving "Third Parties." "Third Parties" mean free or low rate conference calling companies, free or low rate conference calling service companies, and chat line companies. The IXC may not challenge interexchange traffic that OmniTel exchanges with the IXC and that OmniTel also delivers to or receives from "Third Parties" as not being OmniTel Contracted Services or as being illegal or not compensable as OmniTel Contracted Services under the Contract or otherwise for any reason whatsoever. The term "challenge" is used in its broadest sense to mean bringing any type of action, suit, or legal challenge or dispute against OmniTel, involving any type of claim, before any type of decision maker.
6. As provided in the Contract, the obligations of OmniTel and the IXC to adhere to and accept the Single Composite Rate of \$0.014/mou for OmniTel Contracted Services and the other terms, and conditions set forth in the Contract through the service period(s) covered by OmniTel's July 1, 2011 invoices will be unaffected by IUB and Federal Communications Commission orders, rules, or other determinations issued after the date of execution of the Contract, including but not limited to interpretations of the term "switched access traffic," if any, as may be found elsewhere in this Tariff.
7. In accordance with the terms of the Contract, the IXC and OmniTel each release all claims against the other related to OmniTel Services.
8. OmniTel and the IXC shall cooperate to take all necessary or appropriate actions to give full force and effect to the Contract and the IXC's election to take the service plan offered hereby.

ISSUED: September 24, 2008 EFFECTIVE: October 24, 2008  
Date Date

BY: Ronald J. Laudner, Jr. Manager Nora Springs, Iowa 50458  
Name Title Address

OmniTel Communications, Inc.

TELEPHONE TARIFF

PART VII

Filed with Board

Revised \_\_\_\_\_  
Cancels \_\_\_\_\_

Sheet No. 82  
Sheet No. \_\_\_\_\_

ACCESS SERVICES CONCURRENCE

Exhibit "A"

(N)

CONTRACT

OmniTel and [IXC] (individually a "Party" and collectively the "Parties") hereby execute this Contract (the "Contract") in accordance with [cite to provisions of Tariff amendment], on [date];

RECITALS

WHEREAS, OmniTel is a local exchange carrier that provides, among other services, switched access service to interexchange carriers;

WHEREAS, [Name of IXC] and OmniTel wish to enter into this Contract for the provision and invoicing by OmniTel to [Name of IXC] of "OmniTel Contracted Services" (as defined herein);

WHEREAS, the Parties wish for OmniTel to charge [Name of IXC] the "Single Composite Rate" (as defined herein) for "OmniTel Contracted Services" in accordance with the terms and conditions of this Contract;

WHEREAS, the State of Iowa Department of Commerce Utilities Board ("IUB") has approved the offer contained in this Contract on [add date];

NOW THEREFORE, in consideration of the mutual promises and obligations contained herein, the sufficiency of which is acknowledged by the Parties, the Parties agree as set forth below.

ISSUED: September 24, 2008 EFFECTIVE: October 24, 2008  
Date Date

BY: Ronald J. Laudner, Jr. Manager Nora Springs, Iowa 50458  
Name Title Address

## ACCESS SERVICES CONCURRENCE

MUTUAL PROMISES AND OBLIGATIONS

(N).

1. Recitals: The foregoing Recitals are incorporated into and made a part of this Contract.

2. Payment: Within ten (10) days of executing the Contract, and as a condition precedent to the "Single Composite Rate" (as defined herein) becoming effective, [Name of IXC] shall have made all necessary payments to OmniTel to bring current all outstanding invoices for "OmniTel Services" provided by OmniTel to [Name of IXC] through and including the service period covered by invoices dated sixty (60) days or more prior to the execution of this Contract (such invoices, referred to as "Outstanding Invoices"). "OmniTel Services" means the services that the IXC has used and that OmniTel invoiced as intrastate switched access services on the Outstanding Invoices.

3. Dismissal of Any Pending Litigation: Within five (5) days of executing the Contract, and as a further condition precedent to the Single Composite Rate becoming effective, [Name of IXC] shall have filed a pleading to dismiss with prejudice each and every pending proceeding, if any, before any agency or court against OmniTel relating to any dispute with OmniTel over OmniTel Services.

4. Single Composite Rate for OmniTel Services Provided by OmniTel for Originating or Terminating Intrastate Access Traffic Until July 1, 2011 Invoices:

Upon fulfillment of all the conditions precedent in Sections 2 and 3, and as a further condition precedent to the Single Composite Rate becoming effective, once every agency or court dismisses every pending proceeding (or other action) against OmniTel, if any, with prejudice per Section 3 above, then:

(i) OmniTel will charge [Name of IXC] for "OmniTel Contracted Services" a Single Composite Rate of \$0.014 per minute of use ("\$0.014/mou") (hereafter the "Single Composite Rate"). "OmniTel Contracted Services" means intrastate interexchange traffic (a) delivered by [Name of IXC] to OmniTel for delivery to customers of OmniTel or (b) originated by customers of OmniTel and delivered by OmniTel to [Name of IXC] commencing with the effectiveness of the Single Composite Rate in accordance with the terms of this Contract. OmniTel and [Name of IXC] agree that the Single Composite Rate of \$0.014 per minute of use for originating and terminating intrastate traffic includes without limitation local switching, carrier common line, transport facility (mileage) for tandem-host or host-remote, transport termination for tandem-host or host-remote, common trunk port for tandem-host or host-remote, information surcharge, residual interconnection charge, SS7 Signaling, and 800 database queries.

ISSUED: September 24, 2008

Date

EFFECTIVE: October 24, 2008

Date

BY: Ronald J. Laudner, Jr.

Name

Manager

Title

Nora Springs, Iowa 50458

Address



## ACCESS SERVICES CONCURRENCE

4. Single Composite Rate for OmniTel Services Provided by OmniTel for Originating or Terminating Intrastate Access Traffic Until July 1, 2011 Invoices (Continued)

(N)

(ii) The prospective rate for OmniTel Contracted Services through the service period covered by OmniTel's July 1, 2011 invoices will be a Single Composite Rate of \$0.014/mou (and no other charge).

(iii) Once the \$0.014/mou rate becomes effective, invoices for services invoiced by OmniTel as switched access services dated prior to the date that the Single Composite Rate becomes effective for service periods postdating the service periods included in the Outstanding Invoices will be restated at \$0.014/mou and will be due within thirty (30) days of the restated invoice date, inclusive. Such services as are subject to this subparagraph (iii) shall otherwise be considered OmniTel Contracted Services for purposes of this Contract.

5. Retention of Existing Interconnection Point: OmniTel shall, for the duration of the service period covered up to and including OmniTel's July 1, 2011 invoices, continue to designate as its point of interconnection with Iowa Network Services ("INS") its existing point of interconnection, so that the [Name of IXC] may continue to deliver all interexchange traffic to OmniTel through INS at that point and receive all interexchange traffic from OmniTel through INS at that point.

6. Effect of FCC OR IUB Order; Agreement Not to Challenge:

a. The Parties' obligations to adhere to and accept the Single Composite Rate of \$0.014/mou and the other terms, and conditions set forth in this Contract through the service period(s) covered by OmniTel's July 1, 2011 invoices will not be affected by any IUB or Federal Communications Commission or order, rule, or other determination issued after the date of this Contract, including but not limited to interpretations of the term "switched access traffic," if any, as may be found in OmniTel's intrastate tariff.

b. By executing this Contract and as provided herein, [Name of IXC] may not "challenge" OmniTel's invoices relating to or reflecting the \$0.014/mou rate for OmniTel Contracted Services except that [Name of IXC] reserves its right to challenge in good faith charges submitted by OmniTel for (i) errors in volumes of traffic or (ii) errors in calculations, or (iii) types of arrangements for traffic not involving "Third Parties." "Third Parties" mean free or low rate conference calling companies, free or low rate conference calling service companies, and chat line companies. [Name of IXC] may not challenge interexchange traffic that OmniTel exchanges with the [Name of IXC] and that OmniTel also delivers to or receives from "Third Parties" as not being OmniTel Contracted Services or as being illegal or not compensable as OmniTel Contracted Services under the Contract or otherwise for any reason whatsoever. The term "challenge" is used in its broadest sense to mean bringing any type of action, suit, or legal challenge or dispute against OmniTel, involving any type of claim, before any type of decision maker.

ISSUED: September 24, 2008  
Date

EFFECTIVE: October 24, 2008  
Date

BY: Ronald J. Laudner, Jr.  
Name

Manager  
Title

Nora Springs, Iowa 50458  
Address

## ACCESS SERVICES CONCURRENCE

6. Effect of FCC OR IUB Order; Agreement Not to Challenge (Continued)

(N)

c. [Name of IXC] agrees not to bring any action, suit, or legal challenge against OmniTel for OmniTel Services (or the invoices related to such services).

7. Release: OmniTel and [Name of IXC] their predecessors, successors, parents, direct subsidiaries, indirect subsidiaries, affiliates, assigns, heirs and agents, release and forever discharge each other, and each of their respective owners, members, managers, stockholders, predecessors, successors, assigns, agents, directors, officers, employees, direct and indirect parent companies, divisions, direct and indirect subsidiaries, affiliates, related companies or other representatives, and independent contractors, whether current, former, or future, and all persons or entities acting by, through, under or in concert with any of them, from any and all actions, causes of action, claims, suits, debts, damages, judgments, liabilities, demands and controversies whatsoever, whether matured or unmatured, whether at law or in equity, whether before a local, state or federal court or state or federal administrative agency or commission, and whether now known or unknown, liquidated or unliquidated, that they now have or may have had, or thereafter claim to have had, related to OmniTel Services.

8. Effectiveness of Release: The Parties agree that the Release in Section 7 in this Contract shall be fully and finally legally effective upon fulfillment of [Name of IXC]'s obligations under Section 2 and dismissal with prejudice of any and all pending litigation pursuant to Section 3.

9. Binding Agreement: This Contract is binding on the Parties and their respective successors, heirs, legal representatives, and assigns. The person executing this Contract on behalf of OmniTel, and the person executing this Contract on behalf of [Name of IXC], each represents and warrant that he or she is duly authorized to execute and deliver this Contract on behalf of said Party, and that this Contract is binding on said Party.

10. Governing Law: The Contract, including all matters of construction, validity, and performance shall be governed by, and construed in accordance with, the laws of Iowa without giving effect to the choice of law or conflicts of law provisions thereof.

11. Cooperation: The Parties agree to cooperate fully, to execute any and all supplementary documents and to take all additional actions that may be necessary or appropriate to give full force and effect to the terms and intent of this Contract.

12. Counterparts: This Contract may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

ISSUED: September 24, 2008 EFFECTIVE: October 24, 2008  
Date Date

BY: Ronald J. Laudner, Jr. Manager Nora Springs, Iowa 50458  
Name Title Address

## ACCESS SERVICES CONCURRENCE

13. Construction: The Parties acknowledge, represent and warrant that each has been fully advised by its attorney(s) concerning the execution of this Contract, that each has fully read and understands the terms of this Contract, and that each has freely and voluntarily executed this Contract. Each Party has participated in the creation of this Contract. No legal principle interpreting the Contract against the drafter will apply.

14. Modification: This Contract may be modified only by a written document signed by both Parties.

15. No Waiver: No failure or delay by any Party in exercising any right, power, or privilege under this Contract shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise of any right, power or privilege hereunder.

16. Notices: All notices, requests or other communications in connection with or relating to this Agreement must be in writing and sent by (a) certified mail, with return receipt requested, (b) Federal Express or other overnight service, or (c) both (i) by either facsimile or email and (ii) by regular mail. A notice shall be deemed to have been delivered on the date that it is received.

OmniTel will send all notices under this Contract to:

[ ]

[Name of IXC] will send all notices under this Contract to:

Ronald Laudner  
OmniTel Communications, Inc.  
608 East Congress  
Nora Springs, IA 50458  
Fax: (641) 749-9578

ISSUED: September 24, 2008 EFFECTIVE: October 24, 2008  
Date Date

BY: Ronald J. Laudner, Jr. Manager Nora Springs, Iowa 50458  
Name Title Address

OmniTel Communications, Inc.

TELEPHONE TARIFF

PART VII

Revised

Sheet No. 87

Filed with Board

Cancels

Sheet No. \_\_\_\_\_

ACCESS SERVICES CONCURRENCE

with a copy, which shall not constitute notice, to

Thomas Cohen  
Edward A. Yorkgitis, Jr.  
Kelley Drye & Warren LLP  
3050 K Street, N.W., Suite 400  
Washington D.C. 20007-5108  
Fax: (202) 342-8451

IN WITNESS WHEREOF, the Parties have fully executed this Contract as of the date of  
the last signature below.

OMNITEL COMMUNICATIONS, INC.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

[NAME OF IXC]

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

ISSUED: September 24, 2008 EFFECTIVE: October 24, 2008  
Date Date

BY: Ronald J. Laudner, Jr. Manager Nora Springs, Iowa 50458  
Name Title Address

(N)

**STATE OF IOWA  
DEPARTMENT OF COMMERCE  
IOWA UTILITIES BOARD**

MCImetro Transmission Access  
Transmission Services LLC d/b/a Verizon  
Access Transmission Services and MCI  
Communications Services, Inc. d/b/a Verizon  
Business Services,

Complainants

v.

BTC Inc. d/b/a Western Iowa Networks,  
OmniTel Communications, Inc. and Premier  
Communications, Inc.

Respondents

DOCKET NO. FCU-08-11

**VERIZON'S SUPPLEMENTAL FILING REGARDING  
DISMISSAL OF RESPONDENT OMNITEL**

On May 29, 2008, Verizon filed its Complaint in the above-captioned action against three CLECs. On July 25, 2008, Verizon informed the Board that Verizon and OmniTel had resolved their dispute. Pursuant to the terms of its settlement agreement with OmniTel, Verizon dismissed OmniTel from this proceeding with prejudice. On August 12, 2008, the Board issued an order holding OmniTel's dismissal in abeyance until Verizon makes a supplemental filing that satisfies the requirements of 199 IAC 7.18. The Board stated that Verizon's dismissal of OmniTel did not "contain a statement adequate to advise the Board and the parties not joining the proposal of the scope and grounds for settlement," and specifically stated that Verizon must indicate whether (i) the terms of its settlement with OmniTel are available to the non-settling parties and (ii) OmniTel will be required to file a revised tariff with the Board that complies with the terms of

the settlement. *See* Order Granting Motion for Extension and Holding Request for Dismissal in Abeyance, Docket No. FCU-08-11 (“Order”), at 3.

## INTRODUCTION

This supplemental filing provides the information the Board has directed Verizon to provide, but Verizon does not concede that 199 IAC 7.18 applies in this complaint proceeding, where two private litigants have voluntarily settled a bilateral dispute between them. Instead, the rule is directed to cases where one or more parties contest a proposed settlement agreed to by other parties, and contemplates rate proceedings and other quasi-legislative cases where Board action is required and where multiple parties have an interest in a comprehensive settlement proposal. That is not the case here, where Verizon has brought separate claims against three separate CLECs. No party has contested the resolution of the dispute between Verizon and OmniTel and all of the respondents are represented by the same counsel. Moreover, requiring the disclosures the Board asserts are contemplated by 199 IAC 7.18 would discourage private settlements, causing litigants (and the Board) to waste resources litigating claims that could be resolved but for these new filing requirements.

The Board has consistently permitted and encouraged parties to enter into private settlement agreements like the one between Verizon and OmniTel, and it has not previously required settling parties to make the sort of filing requested of Verizon here. For example, when AT&T settled its claims against a subset of the respondents in another traffic pumping case before the Board, the Board accepted simple joint notices from AT&T and several respondents informing the Board that they “have settled their disputes at issue.”<sup>1</sup> The Board should not

---

<sup>1</sup> *See* Joint Notice of Intervenor AT&T and Respondent Farmers-Riceville, Docket No. FCU-07-02 (filed Jan. 29, 2008); Joint Notice of Intervenor AT&T and Respondent Reasnor, Docket No. FCU-07-02 (filed Jan. 31, 2008); Joint Notice of Intervenor AT&T and Respondent Interstate 35 Telephone Company, Docket No. FCU-07-02 (filed Apr. 18, 2008).

abandon its traditional pro-settlement policy with respect to bilateral disputes between private litigants.

To the extent the Board is seeking to ensure uniformity of settlement opportunities among all parties in the litigation, that policy interest does not apply to the facts of this particular case. There are no IXCs other than Verizon in this case, and it is clear from the other access cases before the Board that other IXCs are able to and have asserted their rights to challenge access practices of rural LECs. The two non-settling CLECs are represented by common counsel with OmniTel and do not need or seek application of 199 IAC 7.18. In short, there are no actual parties to this case to whom the Board's apparent policy concerns apply.<sup>2</sup>

However, without waiving its right to challenge the applicability of 199 IAC 7.18 to Verizon's dismissal of OmniTel, Verizon hereby provides the supplemental information the Board has requested.

## **DISCUSSION**

### **A. The Scope and Grounds for the Verizon-OmniTel Settlement.**

Verizon's complaint alleges that Respondents have employed one or more arbitrage schemes, including a "traffic pumping" scheme, to victimize Verizon to the tune of millions of dollars. Verizon initiated this proceeding to obtain relief from each of the schemes perpetrated by each Respondent, and has sought – consistent with the Board's policy favoring voluntary resolution of disputes – to settle its claims against them. The Verizon-OmniTel settlement agreement settles all of the disputes between the two parties and was entered into out of a mutual desire to avoid the necessity, expense, inconvenience, and uncertainty of litigation.

---

<sup>2</sup> AT&T's partial settlement in FCU-07-2 raises more compelling uniformity issues because that case involves several different IXC complainants and numerous LEC respondents – most of which are represented by separate counsel.

Confidentiality restrictions preclude Verizon from disclosing the precise terms of its settlement with OmniTel, but the scope and grounds for the Verizon-Omnitel settlement are (i) Omnitel agreed, as part of a comprehensive set of negotiated trade-offs, to charge Verizon a single composite rate for originating and terminating intrastate and interstate switched access traffic for the next three years; and (ii) Verizon agreed, based on the same set of negotiated factors, to make a lump-sum payment to Omnitel to settle the “past-due” amount that Omnitel claimed Verizon owed for payments that Verizon had withheld for charges associated with Omnitel’s traffic pumping scheme.<sup>3</sup> Verizon’s basis for settling based on a modification of Omnitel’s going-forward rate is that Verizon seeks to stop Omnitel’s traffic pumping and other illegal conduct by reducing Omnitel’s incentives to engage in arbitrage.

**B. The Prospective Rates in the Verizon-Omnitel Settlement Are Available to BTC and Premier Provided That They Agree to Tailor Their Settlement Agreements Appropriately.**

The non-settling parties, who are represented by the same counsel as Omnitel, are aware of the scope and grounds of the Verizon-Omnitel agreement. Verizon’s settlement discussions with BTC and Premier have advanced more slowly than its settlement discussions with Omnitel, but Verizon is willing to use the Omnitel framework – including the same prospective composite rate – as a model for settling its claims against BTC and Premier, provided that the specifics of the settlement are tailored to each Respondent’s relationship with Verizon.

Although each Respondent employed a similar arbitrage scheme to pump up traffic levels to Verizon, there are also differences regarding the nature of their conduct and the injury to

---

<sup>3</sup> Several days after Verizon gave Omnitel courtesy notice of Verizon’s intent to initiate the present litigation, Omnitel filed a complaint before the Federal District Court for the Eastern District of Virginia seeking payment of the switched access charges that Verizon had withheld. See Complaint and Demand For Jury Trial, *Bluegrass Telephone Company, Inc., Omnitel Communications, Inc., Tekstar Communications, Inc., The Farmers Telephone Company of Riceville, Iowa, Inc., v. MCI Communications Services, Inc. d/b/a/ Verizon Business Services*, Docket No. 1:08CV513GLB/TRJ (U.S. Dist. E.D. Va. filed May 21, 2008). Omnitel subsequently withdrew that complaint, the subject matter of which is covered by the parties’ settlement agreement.



Verizon. For example, because each Respondent's traffic volumes and switched access rates with respect to Verizon are different, each Respondent's traffic pumping has resulted in different levels of billings to Verizon and different "past-due" amounts that Respondents claim Verizon owes them. *See* Complaint, ¶ 21, Exhibits A-C. Moreover, the alleged illegal transport routing schemes involve substantially different amounts of transport, and different facts regarding whether or not charges for interLATA transport were improperly assessed. *Id.*, ¶¶ 24-28.<sup>4</sup>

Those and other factual differences mean that the *exact* terms of the OmniTel-Verizon settlement cannot be applied to Verizon's possible settlements with BTC and Premier. However, Verizon would be willing to settle with BTC and Premier based on the same prospective composite switched access rate contained in the Verizon-Omnitel settlement, provided that BTC and Premier agree to a lump sum payment that is tailored to the facts relating to their specific conduct and purported "past-due" amounts.<sup>5</sup>

**C. OmniTel Is Contractually and Legally Obligated to Make All Necessary Tariff or Other Filings.**

The Board also appears to suggest that Verizon's dismissal filing was deficient because Verizon did not state "whether *Omnitel* will be required to file a revised tariff with the Board that complies with the terms of the settlement." Order at 3 (emphasis added). Nothing in 199 IAC 7.18 requires such a statement, and in any event Verizon is unable to respond on OmniTel's behalf. While OmniTel has not authorized Verizon to speak on its behalf, Verizon can state that under the settlement agreement, OmniTel agrees to make any regulatory or tariff filings that may be necessary to comply with the terms of the settlement agreement.

---

<sup>4</sup> Also, some types of conduct – such as Premier's alleged status as a sham CLEC (*id.*, ¶ 32) – can affect each party's litigation prospects in ways that obviously inform the specifics of a possible settlement.

<sup>5</sup> Of course, any settlement discussion with BTC or Premier based on the OmniTel settlement agreement would take place subject to the confidentiality restrictions in that agreement.

## CONCLUSION

For the reasons set forth above, Verizon respectfully requests that the Board dismiss with prejudice Verizon's claims against OmniTel.

Respectfully submitted on August 21, 2008.

By:



BRET A. DUBLINSKE

Dickinson Mackaman Tyler & Hagen, P.C.  
699 Walnut Street, Suite 1600  
Des Moines, IA 50309  
Phone: 515-246-4546  
Facsimile: 515-246-4550  
Email: [bdublins@dickinsonlaw.com](mailto:bdublins@dickinsonlaw.com)

and

A. R. VOGELZANG

Verizon Corp. Services Group Inc.  
600 Hidden Ridge, MC HQE02J27  
Irving, TX 75038  
Phone: 972-718-2170  
Facsimile: 972-718-0936  
Email: [randy.vogelzang@verizon.com](mailto:randy.vogelzang@verizon.com)

CHRISTOPHER D. OATWAY, Asst. Gen. Counsel  
Verizon

1515 N. Court House Rd., Suite 500  
Arlington, VA 22201-2909  
Phone: 703-351-3037  
Facsimile: 703-351-3676  
Email: [christopher.d.oatway@verizon.com](mailto:christopher.d.oatway@verizon.com)

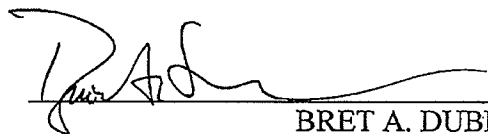
ATTORNEYS FOR VERIZON

CERTIFICATE OF SERVICE

I hereby certify that I have this day, August 21, 2008, served the foregoing document on the following persons in the method indicated below:

Office of Consumer Advocate (3 copies)  
Consumer Advocate Division  
310 Maple Street  
Des Moines, Iowa 50319  
VIA HAND DELIVERY

Robert F. Holz, Jr.  
Davis, Brown Law Firm  
215 10<sup>th</sup> Street, Ste. 1300  
Des Moines, Iowa 50309  
VIA HAND DELIVERY

  
BRET A. DUBLINSKE